widows or widowers — again no reference to claims during marriage. It must, I think, be held that Notice 33 of 1919 is in force at present and that its existence ousts the jurisdiction of the High Court in this case: this opinion may appear to be contrary to certain of the provisions of the Courts Enactment 1925 but that Enactment is itself unsatisfactory and its meaning open to doubt in certain parts.

5. Under these circumstances I cannot do otherwise than dismiss the claim of Wan Kelsom, but I do so with reluctance and only because of Notice 33 of 1919. Since the legal position was obscure, I allow no costs to either party — but I think that the State should refund all fees paid by Wan Kelsom in this claim. She should be told that, if she does not settle this claim amicably with her husband and desires to sue him further, she must do so in the Court of the Chief Kathi.

JUSOH BIN AWANG v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Briggs, J.) February 20, 1950]

[Kuala Trengganu — Criminal Appeal No. 10 of 1949]

Criminal Procedure Code, s. 113 — Statement made to Police Officer put to witness to impeach his credit — Practice — Evidence Ordinance, ss. 145 and 155.

In this case in the course of the trial of the accused the Prosecuting Officer asked the Court to refer to a statement made by one of the prosecution witnesses to the Police and the learned President of the Sessions Court allowed this to be done. The statement recorded by the Police was not proved but the statement was marked as an exhibit.

Held, (1) that as the statement was not proved, it could not be proved in evidence; (2) that the learned President had in effect admitted in evidence matter prejudicial to the accused, which was never proved against him and on which he had no opportunity to cross-examine and therefore the conviction must be set aside.

Case referred to :—

(1) *Mutusamy v. Public Prosecutor* (1948) M.L.J. 57.

CRIMINAL APPEAL from Sessions Court.

Che Maidin bin Mohamed Ibrahim (Pleader) for the appellant.

L. A. Massie (D. P. P.) for the respondent.

Briggs, J. : — I allowed this appeal and set aside the conviction and sentence on a question of illegality under Sec. 113 of Criminal Procedure Code.

Mohamed bin Mat Zin, an uncle of the accused and a witness for the prosecution, apparently "failed to come up to his proof". The Prosecuting Officer asked the Court to refer to his statement and the learned President noted, "material difference" and granted "leave". It does not appear, what the Prosecuting Officer was given leave to do but no doubt the reference is to Sec. 155 of the Evidence Enactment. The accused was not furnished with a copy of the statement, but apparently he did not ask for it. The Prosecuting Officer then cross-examined the witness. The witness admitted having made a statement to a particular Police Sergeant.

The learned President's note proceeds :—

"(Certain portion of the statement read — marked A in blue pencil — admitted P1. Intld. M.M.H.).

I did not make that statement which has been read out to me".

No attempt was made to prove the document in question by the evidence of the Sergeant who took it, although he was present. It was, however, marked as an exhibit and included as such in the appeal record. This is a clear illegality.

It has often been stressed by the Court of Appeal and the High Court that, where an alleged statement put to a witness is denied, it must be formally proved — so often, indeed, that I was at first inclined, on reading the learned President's note, to suppose that he must have intended the document to be marked only for identification; but clearly this was not so. If that had been done, and the statement had not thereafter been proved, the attempt to impeach the witness's credit under Sec. 145 of the Evidence Enactment would have failed, but there would have been no irregularity. If the witness was to be believed, his evidence was useless either to the Prosecution or the Defence. If it was not to be believed, it was equally useless. In these circumstances, an application under Sec. 113 can serve no useful purpose. In cases where the witness actively assists the Defence, an application may well be necessary, but that was not the case here.

In effect, the learned President admitted in evidence matter prejudicial to the accused, which was never proved against him, and on which he had no opportunity to cross-examine.

Perhaps the clearest exposition of the law on this matter is that contained in the Judgment of Taylor J. in *Mutusamy v. Public Prosecutor*[1] a judgment with which I respectfully agree, and which all Presidents and Magistrates would be well advised to study.

Conviction set aside.

PUBLIC PROSECUTOR v. TEOH KIM KIEW.

[App. Crim. Juris. (Callow, J.) February 20, 1950]

[Kedah — Criminal Appeal No. 1 of 1950]

Finance Regulations Proclamation, Regulation 5(2) — Admissibility of statement made by an accused person to a Customs Officer.

The point raised by the Public Prosecutor in this appeal was whether the statement made by the respondent to a Customs Officer was rightly rejected by the